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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

EDVIN KESHISHYAN,

Defendant and Appellant.

B195506

(Los Angeles County
Super. Ct. No. BA268465)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Michael E. Pastor, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Victoria B. Wilson
and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Edvin Keshishyan appeals from his conviction of involuntary manslaughter (Pen. Code, § 192, subd. (b)) following a jury trial.¹ He contends there was insufficient evidence to support the judgment. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The People's Case*

Viewed in accordance with the usual rules on appeal (*People v. Kraft* (2000) 23 Cal.4th 978, 1053), the evidence established that on July 16, 2004, defendant and Christian Bisceglia were strangers to one another but both had spent the prior evening at the White Lotus nightclub. In the club parking lot at approximately 2:00 a.m. that day, defendant punched Bisceglia in the face. Bisceglia fell to the ground and died as the result of a blunt force injury to the back of his head consistent with his head striking a cement or asphalt surface. The medical examiner testified that Bisceglia had contusions on his right lower lip, which were caused by “a significant amount of blunt force trauma applied to that area of his mouth” consistent with a closed-fisted hard punch. Someone could have been knocked unconscious by this injury, but by itself, it would not have been fatal. Bisceglia had several abrasions to the back of the head over the external occipital protuberance. These injuries were consistent with someone hitting their head on the

¹ All undesignated statutory references are to the Penal Code.

Defendant was charged with second degree murder (§ 187) (count 1) and two counts of assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)) (counts 2 and 3); criminal street gang (§ 186.22, subd. (b)(1)(A)) and great bodily injury (§ 12022.7) enhancements were also alleged. At the close of the prosecution's case-in-chief, defendant moved for acquittal pursuant to section 1118.1. The trial court granted defendant's section 1118.1 motion on the murder and felony assault charges and dismissed the great bodily injury enhancements. Without objection, the trial court granted the People's motion to amend counts 1 to the lesser included offense of involuntary manslaughter and counts 2 and 3 to simple assault. The jury found defendant guilty of involuntary manslaughter but not guilty of assault and found the gang enhancement to be not true. Defendant was sentenced to the four-year high term. He filed a timely notice of appeal.

ground after being knocked out. Underneath these abrasions, Bisceglia had several skull fractures and brain hemorrhages. Blood tests indicated that Bisceglia had 0.12 percent alcohol blood content and had used marijuana, neither of which contributed to his death, but could have had an effect on his balance.

Various witnesses gave accounts of events leading up to the incident; for the most part the testimony was consistent. Fadhel Bouaziz testified that by the time the White Lotus closed at 2:00 a.m., Bouaziz and Bisceglia each had had two cocktails; in addition, Bisceglia had ordered a bottle of champagne, which he shared with the group. By the end of the evening, on an intoxication scale of one to 10, Bouaziz placed himself at one (sober) and Bisceglia at seven or eight: “happy,” but not falling down drunk. On their way to the parking lot, Bouaziz and Bisceglia walked past defendant and two companions who were standing next to a sports utility vehicle (SUV). One of the men said a word that Bouaziz did not understand. But Bisceglia, who spoke a number of languages, apparently understood the word because he said to the men, “Don’t say that word.” Defendant and his companions responded by moving in “really close” to Bisceglia and saying, “Yeah, we say that word. What is your problem?” After Bisceglia and the three men repeated this exchange several more times, defendant punched Bisceglia in the face with a closed fist. Bisceglia “came down like someone who is not conscious anymore. And after that, he start falling off, like just someone pushed him a little bit, boom.” Bouaziz maintained that Bisceglia never raised his hand or threatened defendant in any way; he did nothing to indicate he was trying to start a fight; and neither Bisceglia nor Bouaziz made any aggressive movements toward anyone.

Meanwhile, defendant got into an SUV where he remained until parking valet and club security arrived. After Bouaziz identified defendant as the person who hit Bisceglia, one security guard remained with Bouaziz and Bisceglia while another talked to defendant. Bouaziz could not hear what they were saying and he was kept from getting closer by a security guard, but he heard defendant yell out to Bouaziz, “You are lucky that I didn’t get you.” About five minutes later, defendant left in the SUV.

Witness Ashley Steuer generally corroborated Bouaziz’s testimony.

At the time of the incident, Kenneth Green was head of security at the White Lotus. After arriving on the scene he spoke to defendant who said, “Yeah, I hit him.” While Green was talking to defendant, an apparent friend of the victim’s approached and said, “That’s the guy. That’s the guy who did it,” to which defendant responded, “You’re lucky I did not knock you out too.” A few moments later, defendant left in the SUV. Green wrote down the vehicle’s license plate number, which he gave to the police.

Detective George Shamlyan was one of several detectives assigned to investigate Bisceglia’s killing. When defendant voluntarily came to the police station the morning of July 16th, the detectives met him in the lobby. Before they had a chance to take defendant into an interview room, and before they told him that Bisceglia had died, defendant blurted out that he had been drunk, there was a “push and shove,” somebody hit him and he hit back.

2. *The Defense Case*

The manager of the valet parking lot, Anouar Bhiri, recalled seeing Bisceglia leave the club alone that night, “stumbling, couldn’t walk straight. He looked intoxicated. He was drunk.” He confirmed how the altercation started, stated that Bisceglia never raised his arms but he “walked really close to one of them, in his face, asking him what did he say to him when he walked by.” Bhiri could not hear the response of any of the three men but he saw defendant punch Bisceglia.

Vahad Mehrabian went to the White Lotus that night with defendant’s cousin. As he left the club, Mehrabian saw a man rushing towards defendant’s group. Mehrabian and his friend started back to the club “to go see what is going on. Try to contain the situation, if anything was going to happen.” As Mehrabian was walking back, he saw the “guy . . . charging at him, and he was kind of leaning forward, rushing at him. He went kind of nose-to-nose at him.” “He kind of had his fists clenched and his arms at his sides, rigid.” Mehrabian did not see anyone punch anyone, but Mehrabian next saw the person that had approached defendant lying on the ground, not moving.

DISCUSSION

Defendant's sole contention is that the evidence was insufficient to support the conviction of involuntary manslaughter. He argues that no rational trier of fact could have found that the single punch shown by the evidence was dangerous to human life, which is an element of involuntary manslaughter predicated on the commission of a misdemeanor. We disagree.

We review defendant's claim under the well-established rules for determining the existence of substantial evidence to support a jury's findings: we examine the whole record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. The same standard applies when the conviction rests primarily on circumstantial evidence. (*People v. Kraft, supra*, 23 Cal.4th at p. 1053.)

“ ‘Manslaughter is the unlawful killing of a human being without malice.’
(§ 192.) Involuntary manslaughter is manslaughter during ‘the commission of an unlawful act, not amounting to a felony,’ or during ‘the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.’
(§ 192, subd. (b).) ‘The offense of involuntary manslaughter requires proof that a human being was killed and that the killing was unlawful. [Citation.] A killing is “unlawful” if it occurs (1) during the commission of a misdemeanor inherently dangerous to human life, or (2) in the commission of an act ordinarily lawful but which involves a high risk of death or bodily harm, and which is done “without due caution or circumspection.” ’
[Citation.]” (*People v. Murray* (2008) 167 Cal.App.4th 1133, 1140.) The inherent or abstract nature of the underlying misdemeanor is not dispositive. Rather, the offense must be dangerous to human life or safety under the circumstances of its commission. (*People v. Cox* (2000) 23 Cal.4th 665, 674-675 (*Cox*).)

As a general rule, a death resulting from a single blow with a bare fist is not considered murder. (*People v. Spring* (1984) 153 Cal.App.3d 1199 (*Spring*).) But it can be involuntary manslaughter. (See e.g. *Cox, supra*, 23 Cal.4th 665; *Spring, supra*, 153 Cal.App.3d at pp. 1204-1207; *People v. Zankich* (1961) 189 Cal.App.2d 54, 67-68.)

In *Spring, supra*, 153 Cal.App.3d 1199, the defendant hit the victim with a single punch that was not strong enough to cause the victim to fall or lose consciousness. Seventeen days later, the victim died from a subdural hematoma caused by the punch. The appellate court reduced the second degree murder conviction to involuntary manslaughter. (*Id.* at pp. 1205-1206.)

In *Cox*, the defendant was charged with involuntary manslaughter based on evidence that he punched the victim in the head with a single “ ‘solid blow.’ ” (*Cox, supra*, 23 Cal.4th at p. 668.) The trial court instructed the jury that “battery is an inherently dangerous offense and therefore a predicate for involuntary manslaughter without any further proof regarding the circumstances surrounding the commission of that underlying misdemeanor.” (*Id.* at p. 669.) Our Supreme Court reversed, reasoning that the instruction incorrectly “informed the jury that misdemeanor battery is an inherently dangerous offense in the abstract [and thus] removed from the jury’s determination the question of the dangerousness of the predicate misdemeanor battery under the circumstances of its commission.” (*Id.* at p. 676.) It remanded the matter to the appellate court to determine whether the instructional error was prejudicial.

Here, there was evidence that defendant hit Bisceglia with a single punch that caused Bisceglia to fall to the ground and that Bisceglia died as a result of hitting his head on the asphalt when he fell. That this battery was dangerous under the circumstances of its commission can be inferred from the evidence that the punch was strong enough to cause Bisceglia to fall and that it was committed on a hard surface where serious injury was more likely than if it had been on, for example, grass. The evidence suggested Bisceglia was clearly intoxicated, unable to keep his balance in response to a direct blow to the jaw. The jury could have reasonably concluded that defendant, who was not intoxicated, reasonably assessed Bisceglia’s vulnerability making

the battery inherently dangerous. Thus, the evidence was sufficient to support the conviction of involuntary manslaughter.

DISPOSITION

The judgment is affirmed.

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RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

BIGELOW, J.